

INTELLECTUAL PROPERTY LICENSE AGREEMENT

This Intellectual Property License Agreement (the "License") is hereby made and entered into this __14th__ day of __April__, 2014__ by and between City of Bellevue, a municipal corporation ("Bellevue"), and the City of Everett, a municipal corporation ("the Licensee"), the two parties being collectively referred to as "the Parties" in this Agreement.

RECITALS

WHEREAS, Bellevue owns all right, title and interest in and has agreed to license the Content applications and other intellectual property assets set forth herein (hereinafter referred to as "Content"); and

WHEREAS, Licensee desires to license Content from Bellevue; and

NOW, THEREFORE, in consideration of, among other things, the payment by Licensee of the license fee, as identified in the attached SCHEDULE A, and in further consideration of the mutual covenants and agreements contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

Effective as of the date below the Parties agree to following:

1. Bellevue releases and delivers to Licensee the following, free and clear of all claims, mortgages, liens or encumbrances:

The Content described in SCHEDULE A (including source code, object code, documentation, instructions and build files.) and content and data contained therein;

- 1.1 License Grant. Bellevue grants to Licensee a worldwide, non-exclusive, royalty-free license (the "License"):

(a) to use, reproduce, manipulate, or alter for its own use the Content released by Bellevue and delivered to Licensee, through methods owned and/or controlled by Licensee. Bellevue grants to Licensee all necessary reproduction rights to effectuate the intent of this Agreement; and/or

(b) to use, copy, encode, store, archive, distribute, transmit, or render into a useable format the Content.

- 1.2 Unauthorized Copying/Manipulation/Sale. Licensee shall make reasonable efforts to place third parties on notice that any unauthorized copying is strictly prohibited. Licensee further acknowledges it shall not sell the Content or otherwise make a commercial profit from the Content.

- 1.3 Notification of Use. Licensee shall notify Bellevue of the intended use of the Content in writing.

2. Licensee will pay to Bellevue the purchase price as identified in the attached SCHEDULE A. In the event the Licensee fails to fully pay Bellevue for the Content as stipulated by this Agreement, ownership of the Content shall revert to Bellevue.
3. Bellevue represents and warrants as follows:
 - (a) Bellevue has full authority to enter into this Agreement and to carry out its obligations under this Agreement and has obtained all rights, licenses and authorizations necessary to grant the rights, licenses and authorizations it has granted herein;
 - (b) The transaction evidenced by this Agreement complies with all applicable laws;
 - (c) Neither the execution of this Agreement nor the delivery of the Content violates any rights of any third Party;
 - (d) Bellevue has not received notice of any claim that (i) the Content infringes the patent, copyright, trademark, trade secret, or other intellectual property rights of any third Party; (ii) that any third Party claims an interest in any of the Content inconsistent with Licensee's use thereof; or (iii) Bellevue is breach of any obligation to any third Party to the Content;
 - (e) Except as specifically listed in SCHEDULE A, Licensee is not required to pay any amounts to any third Party in order to take possession of and use the Content.
4. By licensing the Content to Licensee, Bellevue **DOES NOT** disclaim its interest in or to the Content. Bellevue retains the right to assert any ownership or other proprietary interest therein, directly or indirectly.
5. This license of the Content to Licensee is non-exclusive and does not bestow exclusive ownership rights. Bellevue retains the right to continue to license the Content to other entities. Licensee, however, has the right to modify, reverse engineer or adapt the Content for its own use in any way it sees fit. Any such modification or adaptation becomes the exclusive product of Licensee. Bellevue will have no ownership interest in the modified or adapted product. However, Licensee shall still be obligated to pay license fees pursuant to this Agreement.
6. Any such modification or adaptation of the Content is at Licensee's own risk. Bellevue does not warrant that the Content will continue to function and Bellevue shall not be liable for any issues that arise as a result of such modification or adaptation.
7. EXCEPT AS PROVIDED ABOVE, THE CONTENT IS PROVIDED "AS IS" AND BELLEVUE HEREBY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND WITH RESPECT TO THE ASSIGNED IP, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MECHANABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

8. **LIMITATION OF LIABILITY**-Other than what has been set forth in this Agreement Bellevue shall not be liable for indirect, incidental, special or consequential damages, including loss of profits, revenue data or use, or the cost of cover incurred arising out of this agreement even if it has been notified of the possibility of such damages.

9. **INDEMNIFICATION**

Each Party shall protect, defend, indemnify and hold the other Party harmless from and against all claims, demands, damages, costs, actions and causes of actions, liabilities, fines, penalties, judgments, expenses and attorneys' fees, resulting from the injury or death of any person or the damage to or destruction of property, or the infringement of any patent, copyright, trademark or trade secret, arising out of their own negligence related to this Agreement, or their violation of any law, ordinance or regulation, contract provision or term, or condition of regulatory authorization or permit. As to the other Party only, both Parties waive any immunity they may have under the state Industrial Insurance Act, RCW Title 51 or any other applicable worker's compensation statute. The Parties acknowledge that this waiver has been negotiated by them, and that the contract price reflects this negotiation.

In addition, with respect to the unaltered or unmodified Content only, Bellevue shall protect, defend, indemnify, and save harmless Licensee, its successors and permitted assigns together with its officers, directors, employees, and from and against any third party claim to the extent attributable to a violation of the intellectual property rights warranty set forth in this Agreement. If any applicable infringement claim is initiated, or in Bellevue's sole opinion is likely to be initiated or likely to be initiated, then Bellevue shall have the option, at its expense, to:

- a) in addition to any other requirements of this section, modify or replace all or the infringing part of the Content so that it is no longer infringing, provided that the Software functionality does not change in any material adverse respect; or
- b) procure for Licensee the right to continue using the infringing part of the Content.

The specific indemnity contained in the preceding paragraph shall survive any termination of this Agreement and shall not be subject to the liability limitation provisions of this Agreement.

Each party hereto (the "indemnifying party") agrees to, at all times, defend, indemnify and hold the other party hereto (the "indemnified party"), officers, directors, agents and employees of each, harmless from and against any and all third party claims and suits and associated damages, losses, liabilities, obligations, fines, penalties, actual costs and expenses (whether based on tort, breach of contract, product liability, patent, trademark or copyright infringement, or otherwise), (collectively, "losses"), arising out of or based on any failure by the indemnifying party to perform any of the representations or warranties specified in this agreement. In seeking indemnification under this agreement, the indemnified party shall promptly give written notice to the indemnifying party when it becomes aware of a threatened or actual claim or suit and upon receipt of such written notice, the indemnifying party will promptly assume and diligently conduct the entire defense of any suit or action, or the making of any claim as to which indemnity may be sought hereunder, including settlements and appeals, at the indemnifying party's sole cost

and expense, and the indemnifying party shall pay and discharge any and all settlement amounts, judgments, or decrees which may be rendered. The indemnified party will reasonably assist the indemnifying party (at no expense to the indemnified party) in the defense and/or settlement of such claim. Without releasing any obligation, liability, or undertaking of the indemnifying party, the indemnified party insofar as its interests are affected, may, at its sole election, participate in any actions described hereunder using counsel of its own choosing at its own cost.

Moreover, if Licensee modifies or alters the Content and a claim of infringement is initiated against Bellevue for the modified Content, Licensee shall be obligated to indemnify, protect, defend and hold harmless Bellevue in accordance with this section.

10. NOTICES.

Any notices required or permitted to be given hereunder by either Party to the other shall be given in writing: (1) by personal delivery; (2) by electronic facsimile with confirmation sent by United States first class registered or certified mail, postage prepaid, return receipt requested; (3) by bonded courier or by a nationally recognized overnight delivery Bellevue; or (4) by United States first class registered or certified mail, postage prepaid, return receipt requested, in each case, addressed to the Parties as follows (or to such other addresses as the Parties may request in writing by notice given pursuant to this section):

City of Bellevue

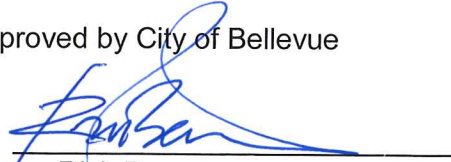
11. Notices shall be deemed received on the earliest of personal delivery, upon delivery by electronic facsimile with confirmation from the transmitting machine that the transmission was completed, twenty-four (24) hours following deposit with a bonded courier or overnight delivery Bellevue; or seventy-two (72) hours following deposit in the United States Mail as required herein.
12. In no event will either Party be liable for any consequential, incidental, special, indirect, exemplary or punitive damages or damages of loss profits, revenue or business, even if such Party has been notified other possibility of such damages.
13. This license shall be governed by, and construed in accordance with the laws of the State of Washington, county of King. The Parties agree that all actions or proceeding arising in connection with this Agreement shall be tried and litigated exclusively in the state courts located in King County, Washington.
14. Any dispute as to the rights pursuant to this Agreement shall be resolved first by submission to non-binding mediation conducted by a mutually agreed upon mediator. Each Party shall bear its own cost of mediation. Should the Parties fail to resolve the matter via mediation, either Party may pursue any remedy allowable under the law.
15. The Parties hereto expressly reserve the right to modify this agreement. No modification or amendment of the terms of this Agreement shall be effective unless in writing and signed by authorized representatives of the Parties.

16. The Parties agree that this Agreement is the complete expression of the terms hereto, and supersedes all other prior and contemporaneous agreement, understanding, and commitments of the parties. Any oral representations or understandings not incorporated herein are excluded.

Agreed to and executed this 27th day of May, 2014.

Approved by City of Bellevue

By


Rick Berman
COO-City of Bellevue IT

Approved by City of Everett

By


Ray Stephanson, Mayor

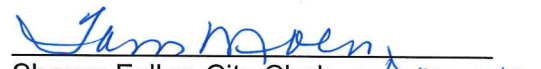
Approved as to form:


Jerome Roaché
Assistant City Attorney

Approved as to Form


James D. Iles, City Attorney

ATTEST:


~~Sharon Fuller~~, City Clerk Deputy

Schedule A

Intellectual Property License Terms

Content:

Description and Functionality

Software Development code for PRAXIS tax application.

All documentation associated

License Schedule:

Everett will pay Bellevue:

Applications	Amount				
PRAXIS	\$25,000				


Support: None

EVERETT CITY COUNCIL AGENDA ITEM COVER SHEET

Purchase B&O Tax Application From the City of Bellevue

COUNCIL BILL #	
Originating Department	IT
Contact Person	Jerry Diedrichs
Phone Number	425.257.8683
FOR AGENDA OF	May 14, 2014

Initialed by:
Department Head
CAA
Council President



DETAILED SUMMARY STATEMENT:

The City of Everett's Business and Occupational tax software application is outdated and must be replaced. There is no "off the shelf" product that will provide the specialized functionality the City requires; thus the City has looked to other cities for a solution. The City of Bellevue has written specialty software for managing their Business and Occupational tax processing and after review by IT staff, Finance and the Clerk's Office it is deemed a good fit for the City of Everett's specialized needs.

The attached Intellectual Property License Agreement includes indemnification language.

RECOMMENDATION (Exact action requested of Council):

Authorize the Mayor to sign the attached Intellectual Property License Agreement with the City of Bellevue.

Concil approve
5/14/14 SJ

